

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION**

UNITED STATES OF AMERICA	Crim. No. 9:23-cr-0396-RMG
v.	<b>DEFENDANT’S MOTION TO COMPEL POLYGRAPH EXAMINATION MATERIALS</b>
RICHARD ALEXANDER MURDAUGH	
Defendant.	

COMES NOW the Defendant, Richard Alexander Murdaugh, by and through his undersigned attorneys and files this motion to compel certain documents and information related to the polygraph examination performed on Mr. Murdaugh and which is the subject of the Government’s pending Motion to Hold Defendant in Breach of Plea Agreement.

In its recently filed reply in support of the above motion, the Government argues that “standard contract law” ought to apply to the motion and to Mr. Murdaugh’s plea agreement, and that application of that law to his agreement should give the Government the unfettered ability to arbitrarily declare that Mr. Murdaugh has violated the agreement. But the Government overlooks that “[p]lea agreements contain a duty of good faith and fair dealing.” *Daniels v. United States*, Cr. No. 3:04-132-MBS, 2007 WL 2688570, at \*5 (D.S.C. Sept. 11, 2007) (citing *United States v. Levaour*, 172 F.3d 45, \*2 (4th Cir. 1999) (unpublished)).<sup>1</sup> Indeed, “[w]here a plea agreement leaves

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<sup>1</sup> In South Carolina, “[a] contract includes not only what is expressly stated but also what is necessarily to be implied from the language used and external facts, such as the surrounding circumstances; and terms which may clearly be implied from a consideration of the entire contract are as much a part thereof as though plainly written on its face.” *Comm. Credit Corp. v. Nelson Motors, Inc.*, 147 S.E.2d 481, 484 (S.C. 1996) (quoting 17A C.J.S. Contracts § 328 at 282–84)). And, “[i]n the absence of an express provision therefor, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made.” *Id.*

discretion to the prosecutor, the court may entertain claims that the prosecutor failed to act in good faith in exercising that discretion.” *Id.*

As Defendant noted in his Sentencing Memorandum, the polygraph examination that forms the basis of the Government’s motion was plagued by many irregularities and violated in material respects the standards for designing appropriate polygraph questions. For these reasons, the Government should not be permitted to rely on the results of that polygraph examination in the first instance. However, if the Court intends to entertain the Government’s position, Mr. Murdaugh should be afforded the opportunity to fully explore the data and information underlying the examination, as he carries the burden to prove by a preponderance of the evidence that the Government has violated the duty of good faith and fair dealing. *See Levaur*, 172 F.3d 45, at \*2.

In particular, Defendant seeks the production of the following documents, data, and information:

- Any digital or computerized files generated by the polygraph machine for Mr. Murdaugh’s examination, sometimes referred to as “PF” files;
- Any audio or video recording of the polygraph examination that may have been created; and
- Any summaries, scripts, notes, or other documents created or used by the polygraph examiner for Mr. Murdaugh’s examination.

This information is critical to the undersigned’s investigation and evaluation of the Government’s position regarding Mr. Murdaugh’s polygraph results. Notably, the “PF” files generated by a polygraph machine contain hard data about what the machine recorded during the examination, and that data can often contradict the examiner’s manual scoring of the polygraph charts. And, given the sensitivity of these machines, things like the polygraph operator’s tone of voice, or even

extraneous noises, can have an impact on the test results. All of this information is thus relevant and provides context to the Government's conduct in relation to Mr. Murdaugh's plea agreement, and there is simply no reason why the Government should not be compelled to provide this information in light of the position taken in its motion.

WHEREFORE, the Defendant respectfully requests that the Government be compelled to produce the above-identified documents and information, which are relevant to the Government's pending Motion to Hold Defendant in Breach of Plea Agreement.

Respectfully submitted,

s/Richard A. Harpootlian

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March 29, 2024

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